IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.1749 OF 2005

Surjeetsingh Jaswantsingh Hora ..Petitioner.
Vs.
Haribhau Sawlaram Ladkat & Ors. ..Respondents.
...
Mr. U.S. Upadhyaya for the petitioner.

CORAM : DR.D.Y.CHANDRACHUD, J.

31st August, 2005.

P.C. :

In the suit filed by the Petitioner (R.C.S. 453 of 1983) seeking declaration of tenancy, a preliminary issue in regard to the jurisdiction of the Court of Small Causes was raised. While upholding the preliminary objection, the Trial Court directed by an order dated 22nd June, 1987 that the plaint be returned to the plaintiff for presentation before the proper Court. Nearly 14 years thereafter an application was filed by the Petitioner contending that the Trial Court had not given appropriate directions – (i) specifying the Court in which the plaint should be presented after its return; (ii) fixing the date for appearance of the parties; (iii) notifying the date to the plaintiff and the defendant. There is absolutely no merit in the submission and the Petition is anything but bonafide.

Sub rule (2) of Rule 10-A of Order 7 provides that where an intimation is given to the Plaintiff under sub rule (1), that the Court is of the opinion that the plaint should be returned, it is for the Plaintiff to make an application to the Court specifying the Court in which he proposes to present the plaint after its return; praying that the Court may fix a date for the appearance of the parties in the said Court, and requesting that the notice of the date so fixed may be given to him and to the defendant. Thereupon under sub-rule (3) the Court is to fix a date for the appearance of the parties in the Court in which the plaint is proposed to be presented and to furnish a notice to the defendant of such date for appearance. In that event, when a notice is given under sub-rule (3), it is not necessary for the Court in which the plaint is presented after its return, to serve the defendant with a summons for appearance in the suit. In the present case, the plaintiff had not moved any application under sub-rule (2) of Rule 10-A of Order 7. The delay of 14 years is totally unexplained. There is no merit in the Petition which is accordingly rejected.